

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
MARITEL, INC., MARITEL ALASKA, INC.,)	
MARITEL GREAT LAKES, INC., MARITEL)	
HAWAII, INC., MARITEL MID-ATLANTIC,)	
INC., MARITEL MISSISSIPPI RIVER, INC.,)	
MARITEL NORTHERN ATLANTIC, INC.,)	
MARITEL NORTHERN PACIFIC, INC.,)	
MARITEL SOUTHERN ATLANTIC, INC.,)	
MARITEL SOUTHERN PACIFIC, INC.)	
)	
Applications to Transfer Control of MariTEL, Inc.	)	File Nos. 0003463998, 0003470447,
and its Subsidiaries to Shareholders of MariTEL,	)	0003470497, 0003470527, 0003470576,
Inc.	)	0003470583, 0003470593, 0003470602,
	)	0003470608, 0003470613
Applications to Modify the Licenses for Stations	)	File Nos. 0003652393, 0003652417
WPOJ538 and WPOJ537)	
)	
Applications to Renew the Licenses for Stations	)	File Nos. 0003832407, 0003832487,
WPOJ530, WPOJ533, WPOJ534, WPOJ535,	)	0003832501, 0003836437, 0003836439,
WPOJ532, WPOJ536, WPOJ531, WPOJ538,	)	0003840247, 0003841628, 0003841952,
WPOJ537, WPTI475, WPTI476, WPTI477,	)	0003841963, 0004900093, 0004900100-01,
WPTI478, WPTI479, WPTI480, WPTI481	)	0004903174-77
)	
Application to Partition and Disaggregate the	)	File No. 0004029237
License for VHF Public Coast Station WPOJ535 to)	
Eastern Kentucky Power Cooperative, Inc.)	
)	
Applications to Partition and Disaggregate the	)	File Nos. 0003941632-33
Licenses for Stations WPOJ532 and WPOJ536 to)	
PacifiCorp)	
)	
Application to Partition and Disaggregate the	)	File No. 0003743672
License for VHF Public Coast Station WPOJ536 to)	
the County of Riverside, California)	

SECOND ORDER ON RECONSIDERATION

Adopted: October 24, 2014

Released: October 24, 2014

By the Chief, Mobility Division, Wireless Telecommunications Bureau:

1. *Introduction.* We have before us a Petition for Reconsideration Based on New Facts and Request under Section 1.41 (Petition) filed by Warren C. Havens and affiliated entities (collectively,

Petitioners).¹ The Petition seeks reconsideration of an *Order on Reconsideration and Order* by the Wireless Telecommunications Bureau's Mobility Division (Division) (2013 Order)² denying Petitioners' petitions for reconsideration (and dismissing a related application for review) of a series of orders by the Division in 2012³ denying Petitioners' petitions to deny the captioned applications filed by MariTEL, Inc. and its subsidiaries (collectively, MariTEL) to transfer, modify, renew, or assign VHF Public Coast station licenses.⁴ As discussed below, we dismiss the Petition.

2. *Background.* In their petitions to deny the MariTEL applications, Petitioners argued primarily that the applications should not be granted because MariTEL's license qualifications have been called into question by certain alleged misconduct by Donald DePriest in connection with another Commission licensee, Maritime Communications/Land Mobile, LLC (MCLM).⁵ The basic character qualifications of DePriest and MCLM are the subject of a pending hearing,⁶ and Petitioners have argued that DePriest controlled MariTEL (in addition to MCLM) at the time he engaged in the potentially disqualifying misconduct and that, as a consequence, DePriest's misconduct could be imputed to MariTEL.⁷ In the 2012 orders, the Division explained that the Commission's Character Qualifications Policy provides that the Commission will withhold action only on applications specifically encompassed in a hearing designation order, rather than all of the designated licensee's applications.⁸ While acknowledging the possibility that misconduct by DePriest might reflect on MariTEL's qualifications if DePriest did in fact control MariTEL during the relevant period, the Division noted that no issues were designated for hearing against MariTEL and that there was no evidence of wrongdoing by MariTEL itself.⁹ The Division therefore concluded that, consistent with the Character Qualifications Policy, it should not withhold processing of the MariTEL applications due to the pendency of the hearing regarding DePriest's and MCLM's qualifications.¹⁰

3. Petitioners sought reconsideration of each of the 2012 orders.¹¹ They argued that in light

¹ Petition for Reconsideration Based on New Facts and Request under Section 1.41, filed June 13, 2013, by Warren C. Havens, Telesaurus Holdings GB LLC, Skybridge Spectrum Foundation, Verde Systems LLC, Environmental LLC, Environmental-2 LLC, Intelligent Transportation & Monitoring Wireless LL, and V2G, LLC (Petition). Also before us is an Opposition of MariTEL, Inc. filed on June 26, 2013, and a Reply to Opposition to Petition for Reconsideration Based on New Facts and Request under Section 1.41, filed by Petitioners on July 9, 2013 (Reply).

² See MariTEL, Inc., *Order on Reconsideration and Order*, 28 FCC Rcd 7080 (WTB MD 2013) (2013 Order).

³ MariTEL, Inc., *Order*, 27 FCC Rcd 3256 (WTB MD 2012); MariTEL Mississippi River, Inc., *Order*, 27 FCC Rcd 7676 (WTB MD 2012); MariTEL Northern Pacific, Inc., *Order*, 27 FCC Rcd 8153 (WTB MD 2012); MariTEL Southern Pacific, Inc., *Order*, 27 FCC Rcd 10978 (WTB MD 2012).

⁴ Not all of the present Petitioners were parties to all of the underlying petitions. The distinctions are not germane for purposes of the analysis herein.

⁵ See 2013 Order, 28 FCC Rcd at 7081 ¶ 2.

⁶ See Maritime Communications/Land Mobile, LLC, *Order to Show Cause, Hearing Designation Order, and Notice of Opportunity for Hearing*, EB Docket No. 11-71, 26 FCC Rcd 6520 (2011).

⁷ See 2013 Order, 28 FCC Rcd at 7081 ¶ 2.

⁸ See, e.g., MariTEL, Inc., *Order*, 27 FCC Rcd 3256, 3259-71 ¶¶ 7-12 (WTB MD 2012) (citing Policy Regarding Character Qualifications in Broadcast Licensing, *Report, Order and Policy Statement*, 102 FCC 2d 1179, 12223-25 ¶¶ 92-95, *recon. denied*, 1 FCC Rcd 421 (1986)).

⁹ *Id.* at 3260 ¶ 9 & n.34, 3261 ¶ 12.

¹⁰ *Id.* at 3261 ¶ 12.

¹¹ In one case, Petitioners filed an application for Commission review as well as a petition for reconsideration of the licensing decision. In the 2013 Order, the application for review was dismissed without prejudice pursuant to Section 1.104(b) of the Rules, 47 C.F.R. § 1.104(b), which provides that a party may file either a petition for

(continued....)

of the pending allegations against DePriest and MCLM, MariTEL's character qualifications should be further investigated prior to action on any of its applications.¹² Petitioners did not, however, present any analysis or precedent that called into question the Division's application of the Character Qualification Policy.¹³ In the *2013 Order*, the Division explained that its grant of the MariTEL applications was based on the Commission's "longstanding policy ... that if the basic qualifications of the licensee (and particular applications or licenses) have been designated for hearing, proceedings involving the licensee's other licenses will not be encumbered with consideration of the pending character allegations made in the principal proceeding."¹⁴ It accordingly denied the petitions for reconsideration.¹⁵

4. *Discussion.* The Petition does not offer any relevant information to warrant reconsideration of the *2013 Order*. It cites three "new facts" to justify reconsideration, but these new facts pertain only to alleged misconduct by DePriest in connection with MCLM.¹⁶ Even if we were to view these new facts as probative of misconduct, they are irrelevant to the holding in the *2013 Order* that, under the Character Qualifications Policy, action on the MariTEL applications should not be delayed until completion of the hearing on DePriest's and MCLM's basic qualifications.¹⁷ Petitioners still have provided no basis to fault the Division's interpretation and application of the Character Qualifications Policy.¹⁸ We therefore dismiss the Petition as repetitious.¹⁹

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reconsideration or an application for Commission review of an action taken on delegated authority, but not both. See *2013 Order*, 28 FCC Rcd at 7084 ¶ 12.

¹² *2013 Order*, 28 FCC Rcd at 7082 ¶ 8. Petitioners also pressed other arguments on reconsideration, such as that there was no one authorized to file applications on behalf of MariTEL. The Division rejected those arguments in the *2013 Order*, *id.* at 7083 ¶ 10, and Petitioners have not renewed those arguments in the instant Petition.

¹³ *Id.* at 7083 ¶ 9.

¹⁴ *Id.* at 7082-83 ¶ 9.

¹⁵ *Id.* at 7084 ¶ 13.

¹⁶ See Petition at 4-9. The first new fact cited by Petitioners is MCLM's invocation of the *Second Thursday* doctrine to terminate the pending hearing in advance of any findings regarding MCLM's basic license qualifications, which the Petitioners view as a "factual admission[]" by DePriest and MCLM that they lack such qualifications (because, if they were innocent, they would want the hearing to proceed to conclusion). *Id.* at 4-6. The second new fact is that MCLM made representations in antitrust litigation between the parties that bear on MCLM's access to certain records of another company, representations that the Petition says "have been found to be false by Petitioners...." *Id.* at 7 (emphasis added). The third new fact cited by Petitioners is an alleged admission at hearing that MCLM warehoused spectrum. *Id.* at 8-9.

¹⁷ Petitioners also claim that reconsideration is warranted under the public interest standard set forth in Section 1.106(c)(2) of the Rules, 47 C.F.R. § 1.106(c)(2), but they have not demonstrated why that is so. See Petition at 2. In addition, Petitioners ask that "[i]f for any reason the FCC does not consider this petition under Section 1.106, ...[that] the facts and argument herein be considered under Section 1.41." *Id.*, citing 47 C.F.R. § 1.41. Given that we have in fact considered the Petition under Section 1.106, and have determined that it is subject to dismissal under Section 1.106(k)(3), we find no basis to consider the Petition under Section 1.41. See, e.g., Warren C. Havens, *Memorandum Opinion and Order*, 28 FCC Rcd 16261, 16265-66 n.39 (2013).

¹⁸ Petitioners' Reply argues that there is no conflict between the Character Qualifications Policy and Petitioners' arguments because "said policy, which was articulated almost two decades ago [sic], is not the be all and end all of FCC law on character, fitness and disqualification." See Reply at 5. But Petitioners have cited to no precedent, and we are aware of none, to suggest that the Character Qualifications Policy does not apply to this matter.

¹⁹ See 47 C.F.R. § 1.106(k)(3) (providing that a "petition for reconsideration of an order which has been previously denied on reconsideration may be dismissed by the staff as repetitious"); see also, e.g., Warren C. Havens, *Third Order on Reconsideration*, 26 FCC Rcd 10888, 10891 ¶¶ 9-10 (2011) (dismissing petition for reconsideration as repetitious and frivolous because it "contained no *relevant* new facts on the question" before the Commission) (emphasis in original).

5. *Ordering Clauses.* Accordingly, IT IS ORDERED pursuant to Sections 4(i), 5(c), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 155(c), and 405(a), and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, that the Petition for Reconsideration Based on New Facts and Request under Section 1.41 filed by Warren C. Havens, Telesaurus Holdings GB LLC, Skybridge Spectrum Foundation, Verde Systems LLC, Environmental LLC, Environmental-2 LLC, Intelligent Transportation & Monitoring Wireless LL, and V2G, LLC, on June 13, 2013 IS DISMISSED.

6. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Roger S. Noel
Chief, Mobility Division
Wireless Telecommunications Bureau